

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 1:07-cr-0126-SEB-TAB
	)	
RYAN STARLING,	)	
	)	- 01
Defendant.	)	

**REPORT AND RECOMMENDATION**

On November 12, 2019, the Court held a hearing on the Petition for Warrant or Summons for Offender Under Supervision filed on June 26, 2018 and a supplemental petition filed on July 9, 2018. Defendant Starling appeared in person with his appointed counsel Michael Donahoe. The government appeared by Peter Blackett, Assistant United States Attorney. U. S. Parole and Probation appeared by Officer Jason Phillips.

The Court conducted the following procedures in accordance with Fed. R. Crim. P. 32.1(a)(1) and 18 U.S.C. § 3583:

1. The Court advised Defendant Starling of his rights and provided him with a copy of the petition. Defendant Starling orally waived his right to a preliminary hearing.
2. After being placed under oath, Defendant Starling admitted violation numbers 1, 2, 3, 4, 5, and 6. [Docket Nos. 31 and 35.]
3. The allegations to which Defendant admitted, as fully set forth in the petition, are:

**Violation  
Number**

**Nature of Noncompliance**

- 1      **“The defendant shall refrain from any unlawful use of a controlled substance.”**

On June 3, and 7, 2018, Mr. Starling provided urine specimens which confirmed positive for anabolic steroids by Alere Laboratory.

As previously reported to the Court, on July 7, 2016, and April 17, 2017, Mr. Starling provided urine specimens which tested positive for cocaine. He admitted using cocaine and signed an admission form. The offender also admitted to smoking marijuana on or about July 9, 2016. A urine sample collected July 14, 2016, tested positive for marijuana. On January 8, 2018, Mr. Starling provided a urine specimen which tested positive for Buprenorphine. He admitted taking Suboxone, which was not prescribed to him, and signed an admission form.

- 2      **“The defendant shall refrain from unlawful use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.”**

As previously reported to the Court, on August 24, 2016, at approximately 12:00 p.m., this officer observed Mr. Starling as he was leaving "Sidelines" sports bar in Avon, Indiana. When confronted, he admitted consuming three "shots" and one beer during his lunch break. A portable breath test was administered with a reading of .135% BAC. Mr. Starling was informed this officer would not permit him to drive back to work due to the alcohol level. He complied and called his wife, who arrived to take him home.

- 3      **“You shall not use or possess alcohol.”**

As previously reported to the Court, on April 14, 2017, Mr. Starling admitted consuming alcohol on April 13, and into the early hours on April 14, 2017. He signed an admission form. On January, 23, 29, February 3, 11, and 15, 2018, Mr. Starling provided urine specimens which confirmed positive for alcohol by Alere Laboratory. Mr. Starling admitted consuming alcohol and signed an admission form.

- 4           **“You shall serve two days, specifically, Friday 6:00 p.m. to Sunday 6:00 p.m., of intermittent confinement in a county jail, or secure facility as designated by the BOP per week for 180 days. Subsistence is waived.”**

Mr. Starling has not complied with all rules of the residential re-entry center (RRC) facility. On April 28, 2018, Mr. Starling was found smoking in the shower area of the restroom. In addition, on May 13, 2018, he was found smoking in the restroom stall.

- 5           **“The defendant shall not commit another federal, state, or local crime.”**

On July 5, 2018, Mr. Starling was arrested by the Hendricks County Sheriff's Department for counts one and two, possession of cocaine (felony); count three, possession of marijuana (misdemeanor); and count four, possession of marijuana - prior drug offense (felony). The case is pending in Hendricks County Circuit Court under Cause Number 32C01-1807-F5-000078. A pretrial conference is set for August 20, 2018, with a jury trial date set for September 11, 2018.

According to the probable cause affidavit dated July 5, 2018, a vehicle was observed traveling at what appeared to be a higher speed than the posted speed limit. A traffic stop was initiated, and the driver was identified as Mr. Starling. The Deputy smelled an odor of raw marijuana coming from the vehicle. Another Deputy and his K-9 partner performed a walk around of the vehicle and the K-9 indicated the existence of illegal drugs. On the passenger's side floorboard, there as a black lunch box containing two large bags of marijuana. One weighed 420 grams and the other approximately 330 grams. In a separate lunch box, liquid THC vape tubes were located along with an additional 4 grams of marijuana. In addition, a small green metal can was located containing cocaine residue. A digital scale was also located in the vehicle. Mr. Starling was arrested and transported to the Hendricks County Jail without incident.

4.       The parties stipulated that:
- (a)       The highest grade of violation is a Grade B violation.
  - (b)       Defendant's criminal history category is VI.
  - (c)       The range of imprisonment applicable upon revocation of supervised release, therefore, is 21 to 27 months' imprisonment.

5.       The parties jointly recommended a sentence of fifteen (15) months with supervised release to follow. Defendant requested placement at FCC Terre Haute.

The Magistrate Judge, having considered the factors in 18 U.S.C. § 3553(a), and as more fully set forth on the record, finds that the Defendant violated the conditions in the petition, that his supervised release should be revoked, and that he should be sentenced to the custody of the Attorney General or his designee for a period of fifteen (15) months with supervised release to follow. In addition to the mandatory conditions of supervision, the following conditions of supervised release will be imposed:

1. You shall report to the probation office in the judicial district to which you are released within 72 hours of release from the custody of the Bureau of Prisons. Justification: This condition is an administrative requirement of supervision.
2. You shall report to the probation officer in a manner and frequency directed by the court or probation officer. Justification: This condition is an administrative requirement of supervision.
3. You shall permit a probation officer to visit you at a reasonable time at home, or another place where the officer may legitimately enter by right or consent, and shall permit confiscation of any contraband observed in plain view of the probation officer. Justification: This condition will assist the probation officer in monitoring the defendant for protection of the community.
4. You shall not knowingly leave the judicial district without the permission of the court or probation officer. This condition is an administrative requirement of supervision.
5. You shall answer truthfully the inquiries by the probation officer, subject to your 5th Amendment privilege. This condition is an administrative requirement of supervision.
6. You shall not meet, communicate, or otherwise interact with a person you know to be engaged, or planning to be engaged, in criminal activity. You shall report any contact with persons you know to be convicted felons to your probation officer within 72 hours of the contact. Justification: This condition is aimed at reducing the risk of recidivism and providing for public safety.
7. You shall reside at a location approved by the probation officer and shall notify the probation officer at least 72 hours prior to any planned change in place or circumstances of residence or employment (including, but not limited to, changes in who lives there, job positions, job responsibilities). When prior notification is not possible, you shall notify the probation officer within 72 hours of the change. Justification: This condition will assist the probation officer in monitoring the defendant for protection of the community.

8. You shall not own, possess, or have access to a firearm, ammunition, destructive device or dangerous weapon. Justification: This condition will assist the probation officer in monitoring the defendant for protection of the community.
9. You shall notify the probation officer within 72 hours of being arrested, charged, or questioned by a law enforcement officer. Justification: This condition is an administrative requirement of supervision.
10. You shall maintain lawful full time employment, unless excused by the probation officer for schooling, vocational training, or other reasons that prevent lawful employment. Justification: This condition will ensure the defendant maintains gainful employment and reduce the risk of recidivism.
11. You shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court. Justification: This condition is recommended to assist the probation officer in supervising the offender and ensure the safety of the community. Due to Mr. Starling's criminal history, the aforementioned conditions are prudent.
12. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and shall permit the probation officer to make such notifications and/or confirm your compliance with this requirement. Justification: This condition is recommended to assist the probation officer in supervising the offender and ensure the safety of the community. Due to Mr. Starling's criminal history, the aforementioned condition is prudent.
13. You shall make a good faith effort to follow instructions of the probation officer necessary to ensure compliance with the conditions of supervision. Justification: This condition is aimed at reducing the risk of recidivism and providing for public safety.
14. You shall pay the costs associated with the following imposed conditions of supervised release/probation, to the extent you are financially able to pay [substance abuse treatment, substance abuse testing, location monitoring, mobile alcohol monitoring]. The probation officer shall determine your ability to pay and any schedule of payment. Justification: This condition will require him to invest into his rehabilitation.
15. You shall participate in a substance abuse or alcohol treatment program approved by the probation officer and abide by the rules and regulations of that program. The probation officer shall supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The court authorizes the release of the presentence report and available evaluations to the treatment provider, as approved by the probation officer. Justification: This condition will address the defendant's history of substance abuse.
16. You shall not use or possess any controlled substances prohibited by applicable state or federal law, unless authorized to do so by a valid prescription from a licensed medical practitioner. You shall follow the prescription instructions regarding frequency and

dosage. Justification: This condition will address the defendant's history of substance abuse.

17. You shall submit to substance abuse testing to determine if you have used a prohibited substance or to determine compliance with substance abuse treatment. Testing may include no more than 8 drug tests per month. You shall not attempt to obstruct or tamper with the testing methods. Justification: This condition will address the defendant's history of substance abuse.
18. You shall not use or possess alcohol. Justification: This condition will address the defendant's history of alcohol abuse and ensure compliance with an alcohol-free lifestyle.
19. You shall not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances (e.g., synthetic marijuana, bath salts, Spice, glue, etc.) that impair a person's physical or mental functioning, whether or not intended for human consumption. Justification: This condition will help ensure compliance with a drug-free lifestyle.
20. You shall submit to the search by the probation officer of your person, vehicle, office/business, residence, and property, including any computer systems and hardware or software systems, electronic devices, telephones, and Internet-enabled devices, including the data contained in any such items, whenever the probation officer has a reasonable suspicion that a violation of a condition of supervision or other unlawful conduct may have occurred or be underway involving you and that the area(s) to be searched may contain evidence of such violation or conduct. Other law enforcement may assist as necessary. You shall submit to the seizure of contraband found by the probation officer. You shall warn other occupants these locations may be subject to searches. Justification: The offender has a history of drug use, drug distribution, and possessing a firearm. This condition will assist the probation officer in monitoring compliance and protection of the community.
21. You shall not be a member of any gang or associate with individuals who are members. Justification: This condition is recommended based upon the offender's criminal history.
22. You shall not knowingly enter any bar, tavern, etc. Justification: This condition will address the defendant's history of alcohol abuse and ensure compliance with an alcohol-free lifestyle.
23. You shall be monitored by Radio Frequency for a period of up to 180 days, to commence as soon as practical, and shall abide by all the technology requirements. You may be restricted to your residence at all times except for employment, education, religious services, medical, substance abuse or mental health treatment, attorney visits, court ordered obligations, or other activities as pre-approved by the probation officer. Justification: This condition will assist the probation officer in monitoring compliance and protection of the community by limiting his whereabouts in the evening hours.

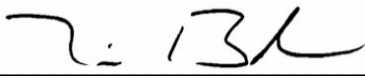
24. You shall be monitored by mobile alcohol monitoring, such as Soberlink, for a period of up to 180 days, to commence as soon as practical, and shall abide by all technology requirements. Justification: This condition will address the defendant's history of alcohol abuse and ensure compliance with an alcohol-free lifestyle.

Defendant reviewed the foregoing conditions and they were reviewed by defendant with his attorney. Defendant, on the record, waived reading of the above-noted conditions of supervised release.

The Defendant is to be taken into custody immediately pending the District Judge's action on this Report and Recommendation. The Magistrate Judge will make a recommendation of placement at FCC Terre Haute.

The parties are hereby notified that the District Judge may reconsider any matter assigned to a Magistrate Judge. The parties waived the fourteen-day period to object to the Report and Recommendation.

Dated: 11/20/2019

  
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Tim A. Baker  
United States Magistrate Judge  
Southern District of Indiana

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